

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD**

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SEVENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO :7472 of 2001

Between:

C.V. Gopala Swamy

..... PETITIONER

AND

1.Andhra Pradesh Forest Development Corporation Limited, represented by its
Vice-Chairman and Managing Director & another.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE K.C. BHANU

W.P.No. 7472 of 2001

ORDER:

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This Writ Petition is filed to declare the orders passed by the 1st respondent in PD/6316/98/2649, dated 26.5.2000 in Office Order No.181/2000 imposing the punishment of reduction to the minimum pay in the incremental scale of Divisional Manager with cumulative effect for a period of five years with all financial implications which would have its impact on gratuity etc., and also the consequential rejection orders passed by the Board of Directors in

Ref.No.PD/6316.98/5232 and Office Order No.423/2000 dated 28.11.2000, as arbitrary and illegal.

Before adverting to the question as to whether the impugned Order issued by the 1st respondent suffers from any legal infirmity requiring any interference as such by this Court, in exercise of its writ jurisdiction, it may be necessary, briefly, to note the relevant facts leading to the filing of this writ petition: The petitioner was the in-charge of Annapureddipalli Zone of Kothagudem Division under A.P. Forest Development Corporation Limited, from 11.12.1991 to 15.10.1994 as Plantation Manager and he was in-charge of Seven Eucalyptus and Bamboo Plantation series in an area about 3200 hectares and raising of about 40 hectares of Eucalyptus plantation in Lankapalli in 1994. In addition to that he was attending the office work. It is not physically possible to inspect each plantation in the large extended area and if any untoward incident is taken place they have to intimate to the higher ups. Further, the then Divisional Manager one Mr. Jayanand Kumar, inspected the 'Buggapadu B 1981 BP' on 9.7.1994 and noticed fellings were occurred one month prior to the inspection and also found that some patches of burning was also done and some material was found missing from the plantation and that he recorded the statement of one Mr. Krishnaswamy. Basing on the same the Divisional Manager, Kothagudem issued a charge memo dated 3.9.1994 and in view of certain procedural irregularities, the 1st respondent has been pleased to issue revised charge-memo dated 23.2.1999. The petitioner gave explanation on 30.4.1999 for the charge memo stating that he had taken all possible steps in identifying culprits for illicit felling and cases were filed and thereby encroachments were prevented and he had filed the material papers before the 1st respondent for ready reference. Not satisfying with the explanation and material papers, the enquiry officer was appointed who conducted regular departmental enquiry and submitted his report dated 24.1.2000 holding that the charges leveled against him are proved. Accepting the said findings the disciplinary authority called for the final explanation and awarded with a punishment of reduction to the minimum pay in the incremental scale of Divisional Manager with cumulative effect for a period of five years with immediate effect with all financial implications. Challenging the same, an appeal has been preferred to the Board

of Directors. The Board of Directors had passed its order dated 28.11.2000 rejecting the appeal and confirming the punishment.

The respondent-corporation filed a counter affidavit contending that the post of plantation manager is responsible for execution of works, maintenance and harvesting of plantations through his subordinates and to protect the same from illicit fellings and encroachments. An area of 70 hectares in the said plantation was encroached by the nearby Yathalakunta villagers and no single entry was recorded over the execution of works in the plantation journal. The petitioner failed to submit the tour diaries to the Divisional Manager, Kothagudem within a prescribed period. Since the petitioner was responsible for such irregularities such as fellings, encroachments and non-submission of diaries, an enquiry was ordered against him. Further, as per the Memorandum and Articles of Association and as per the Government orders, the Managing Director, as Vice Chairman, is required to convene the Board of Directors' meeting to take cognizance of the proceedings and also for taking any decision. Accordingly, the enquiry against the petitioner was properly conducted following the procedural aspects. They are invested with the discretion to impose appropriate punishment keeping in view of the magnitude or the gravity of the misconduct and prayed to dismiss the writ petition.

The petitioner also filed reply affidavit stating that as per the established procedure for conducting departmental enquiry along with the Article of Charges, Form No.1 questionnaire is to be communicated duly notifying the names of the witnesses on behalf of the department side. It is further submitted that he had filed statutory appeal to the Board and the Board of Directors considered the matter in its 127th Board Meeting held on 6.11.2000 and rejected the petitioner's appeal.

The learned counsel appearing for the petitioner contended that the findings are based upon no evidence; an enquiry was not conducted in accordance with the rules that the disciplinary authority has not violated the evidence as per the rules that the appellate authority is suffered with principles

of bias. In view of the fact that the disciplinary authority participated as one of the member of the Board of Directors that an order in appeal passed mechanically without adverting to the Rules and therefore he prays to allow the writ petition.

On the other hand, the standing counsel appearing for the respondents (corporation) contended that the Regulations cited by the learned counsel for the petitioner are not applicable since the amended Regulations came into effect in the year 1999, whereas the charge sheet was issued in 1994. Therefore, the old regulations would govern the disciplinary proceedings and that all the points raised by the petitioner are not there in the old rules and the disciplinary authority participated in the Board meetings as per the rules and therefore, there are no grounds to interfere with the impugned proceedings.

Insofar as certain irregularities said to have been committed by the petitioner, two charges have been framed against him, which are as follows:

Firstly: Negligence of duty resulting in felling and missing of material in Buggapadu-B 1981 BP.

Secondly: Non submission of tour diaries from 1.1.1993 to 30.9.1993 and 1.11.1993 to 31.7.1993.

The petitioner gave explanation for the charge stating that he has taken all possible steps in identifying culprits for illicit felling and cases were filed and thereby encroachments were prevented. Insofar as non-submission of two diaries is concerned, they were submitted subsequently and there was delay on his part in few times. Not satisfying with the explanation, the enquiry officer was appointed who conducted regular departmental enquiry and submitted his report dated 24.1.2000 holding that the charges leveled against him are proved. Accepting the said findings the disciplinary authority called for the final explanation and awarded with a punishment of reduction to the minimum of the pay in the incremental scale of Divisional Manager with cumulative effect for a

period of five years with immediate effect with all financial implications. Challenging the same, an appeal has been preferred to the Board of Directors. The Board of Directors had passed its order dated 28.11.2000 rejecting the appeal and confirming the punishment.

It is not disputed that disciplinary authority, in an appeal, the appellate authority being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view of the magnitude or the gravity of the misconduct. It is also equally well settled that the Court should not interfere with the administrators' decision unless it was illogical or suffers from procedural impropriety or was shocking conscience of the Court in the sense that it was in defiance of logic over moral standards. The scope of judicial review is limited deficiency in decision-making process and not the decision.

The learned counsel for the petitioner relied upon Clause 4 of Disciplinary Rules read with Sub-rule 3 of Regulation 63 of Andhra Pradesh Forest Development Corporation Limited Staff Regulations –1975 (for short 'APFDC Staff Regulations') which reads as follows:

4. The competent Authority to impose penalties/Disciplinary Authority shall deliver or cause to be delivered to the employee a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the employee to submit within such time as may be specified a written statement of his defence, and to state whether he deserves to be heard in person:

- i. On receipt of the written statement of defence, the Competent Authority to impose penalties/Disciplinary Authority may itself inquire into such of the articles of charges as are not admitted or if it considers it necessary to do so appoint an Inquiring Authority for the purpose and where all the articles of charges have been admitted by the employee in his written statement of defence, the Competent Authority to impose penalties/Disciplinary Authority shall record its finding on each charge after taking such evidence as it may think fit and shall take necessary further action to impose penalties;
- ii. If no written statement or defence is submitted by the employee, the Competent Authority to impose penalties or Disciplinary Authority may itself inquire into the articles of charges or may if it considers it necessary to do so appoint an Inquiring

Authority for the purpose;

- iii. Where an enquiry is contemplated, the competent authority shall appoint a corporation employee as Presenting Officer to present the case in support of the articles of charges. A Legal practitioner may also be appointed as Presenting Officer with the express permission to be obtained from the Vice Chairman & Managing Director.

He also relied upon Clause-5:

5. The Competent Authority to impose penalties/Disciplinary Authority shall where it is not the enquiring authority forward to the enquiring authority;

- i. a copy of the articles of charges together with copies of statements of imputations;
- ii. a copy of the written statement of defence, if any, submitted by the employee;
- iii. a copy of the statements of witnesses, if any;
- iv. evidence proving the delivery of the charge sheet/documents to the employee;
- v. a copy of the order appointing the Presiding Officer.

So, basing on the above clauses, the learned counsel vehemently contended that the list of documents and witnesses had not been furnished and that evidence was not let in. He also relied upon the Clause-12, which reads as follows:

12. On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the presenting officer and may be cross-examined by or on behalf of the Charged employee. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter without the leave of the Inquiring Authority. The Inquiring Authority may also put such questions to the witnesses as it thinks fit.

Therefore, the Enquiry Officer had not followed the above said procedure. According to the learned counsel for the petitioner, this amendment of Sub Rule-3 of Regulation-63 of APFDC Staff Regulations was amended in virtue of proceedings dated 22.7.1999. Therefore, the said amendment has no

application to the case of the petitioner. In view of the fact that the disciplinary proceedings have been initiated against the writ petitioner in the year 1994 prior to proceedings dated 22.7.1999 which made it clear that the disciplinary proceedings already initiated prior to issuance of these orders shall be finalized in accordance with the Rules existing at that time and initiation of disciplinary proceedings only till the award of punishment. Therefore, regulations relied on by the learned counsel for the petitioner have no application to the present facts of the case, in view of the fact that those amended regulations came into force with effect from 22.7.1999.

According to the enquiry report, an oral enquiry was conducted on 30.8.1999 at Sathupalli and the number of questions were put and answers were given during the enquiry have been recorded and after the said oral enquiry the copies of the enquiry proceedings were served to the delinquent officer and thereupon delinquent officer submitted his further explanation. No doubt, as rightly contended by the learned counsel for the petitioner that no witness was examined during the enquiry and also no document was referred to. The learned counsel for the petitioner relied upon the decision reported in **State of Haryana V. Rattan Singh**¹ wherein it was held that:

“Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record.”

In **Bhagat Ram V. State of Himachal Pradesh**² wherein it was held:

“In a petition under Art.226, the High Court does not function as a court of appeal over the findings of disciplinary authority. But where the finding is utterly perverse the High Court can always interfere with the same.”

In **Union of India V. H.C.Goel**³ wherein it was held:

“That is a matter which is within the competence of the authority which deals with the question; but the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion.”

In **Nand Kishore V. State of Bihar**⁴ wherein it was held that:

“Before dealing with the contentions canvassed, we may remind ourselves of the principles, in point, crystallized by judicial decisions. The first of these principles is that disciplinary proceedings before a domestic tribunal are of a quasi-judicial character; therefore, the minimum requirement of the rules of

natural justice is that the tribunal should arrive at its conclusion on the basis of some evidence, i.e. evidential material which with some degree of definiteness points to the guilt of the delinquent in respect of the charge against him. Suspicion cannot be allowed to take the place of proof even in domestic inquiries. As pointed out by this Court in *Union of India v. H.C.Goel*, AIR 1964 SC 364, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held under the statutory rules.”

In **Jagdish Prasad Saxena V. The State of Madhya Bharat**⁵ wherein it was held:

“The departmental enquiry is not an empty formality; it is a serious proceeding intended to give the officer concerned a chance to meet the charge and to prove his innocence. In the absence of any such enquiry it would not be fair to strain facts against the appellant and to hold that in view of the admissions made by him the enquiry would have served no useful purpose. That is a matter of speculation which is wholly out of place in dealing with cases of orders passed against public servants terminating their services.”

There is no dispute of the proposition of law laid down by the Apex Court. But in this case, in view of the admissions made by the delinquent, it is clear that he has not discharged his duties properly and he himself admitted that his subordinate has not informed him about the irregularities would itself go to show that the charges can be said to be based upon some material on record.

In the inspection by the Divisional Manager, Kotha Gudem, certain irregularities have been noticed viz., large number of miscellaneous trees and also some bamboo clumps were illicitly felled in about 40 hectares of ‘Buggapadu B 1981 BP’. Some of the felled material was found to have been burnt. Enumeration was carried out and part of the felled material worth about Rs.31038.20 was found missing. So, basing on that inspection report of the Divisional Manager, charge sheet had been issued. The explanation of the delinquent officer that there was land dispute between the Revenue Authorities and Forest Authorities and that he was busy during the year 1994 in planting works in Lankalapalli and therefore, he could not visit the ‘Buggapadu B 1981 BP’ and that the Deputy Plant Manager did not report all the illicit fallings and encroachments in ‘Buggapadu B 1981 BP’. It is his responsibility to supervise the same, he cannot throw the blame on the Deputy Plant Manager. According to him, the

same was noticed by him on 9.7.1994 and thereafter he took all possible steps, on which date, the Divisional Manager also noticed the same. Therefore, it cannot be said that the findings are not based upon any other evidence. Taking the report of the Divisional Manager and also explanation offered by the delinquent officer, the findings on the charge No.1 cannot be said to be perverse or without any evidence.

Insofar as the charge No.2 is concerned, the petitioner himself admitted that due to field problems and complaints, submission of two diaries delayed by some authorities. According to the case of the department that diaries have to be submitted by the Plantation Manager to the controlling authority latest by the 20th for the first fortnight and by 5th of succeeding month for the second fortnight. The details for the month of non-sending of diaries have been specifically mentioned in the charge memo. Therefore, the findings of the Enquiry Officer cannot be said to be perverse.

The Disciplinary Authority, passed the order dated 26.5.2000 taking note of all the circumstances, imposed punishment. Thereafter, not satisfying with the punishment, he filed appeal before the Board. The Board rejected the same after elaborate consideration. The contention of the learned counsel for the petitioner that disciplinary authority is one of the members of the Board and therefore, there would be bias. For that proposition, the learned counsel for the petitioner relied upon a decision reported in **Amar Nath Chowdhury V. Braithwaite and Company Limited**⁶, wherein it was held:

In view of the aforesaid definition of the expression “Board”, the Board could have constituted a committee of the Board/management or any officers of the Company by excluding the Chairman-cum-Managing Director of the Company and delegated any of its powers, including the appellate power, to such a committee to eliminate any allegation of bias against such an Appellate Authority. It is, therefore, not correct to contend that the rule against bias is not available in the present case in view of the “doctrine of necessity”. We are, therefore, of the view that reliance on the doctrine of necessity in the present case is totally misplaced.

The above decision has no application to the facts of the case on hand, because a specific rule is provided for, the Board may delegates its power to any of the officers in exercise of the powers. But in this case, there is no such delegation because the ‘Board’ is defined under the APFDC Staff Regulations

which reads as follows:

‘Board’ means the Board of Directors of the Corporation and in relation to any powers exercisable by it, includes any committee’.

Therefore, there was no delegation of powers of the Board to any officers of the company.

One of the contentions is that the Appellate Authority has not applied its mind and rejected the appeal of the petitioner mechanically. He relied upon a decision reported in **Ram Chander V. Union of India & others**⁷ wherein it was held:

“The word ‘consider’ has different shades of meaning and must in R.22(2), in the context in which it appears, mean an objective consideration by the Railway Board after due application of mind which implies the giving of reasons for its decision”.

There cannot be any dispute that the appellate authority has to consider the appeal independently and has to record its reasons. Regulation-68(2) which runs thus:

“(2) In the case of an appeal against an order imposing any of the penalties specified in sub-rule (1) of Rule (63) or enhancing any penalty imposed the appellate authority shall consider:

- a. Whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;
- b. Whether the findings of the disciplinary authority are warranted by the evidence on the record; and
- c. Whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe and pass orders:
 - i. Confirming, enhancing, reducing or setting aside the penalty;
or
 - ii. Remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case.”

As seen from the order of the appellate authority as duly taken note of the explanation in the findings of the enquiry officer and considering the past record

of service, find no merit in the appeal. No doubt, the order of the appellate authority does not contain any reasons, the appellate authority has taken note of the charges, and the findings of the enquiry officer and the lapses or irregularities committed by the charged officer have been stated in the appellate authority's order. Even the charged officer himself accepted the irregularities, but he gave an explanation, which is not convincing. Since the writ petitioner did not raise any points with regard to the procedure to be followed in the manner of conducting enquiry in the appeal grounds, the same cannot be raised for the first time in the writ petition. The contentions raised by the petitioner in this appeal have not taken either in the disciplinary proceedings or in the appeal grounds before the Board. So, the contention of the learned counsel for the petitioner is that the findings are based upon no evidence is devoid of merit and wholly untenable. Therefore, there are no grounds to interfere with the impugned proceedings.

The Writ Petition is devoid of merits and is accordingly dismissed. In the circumstances, no order as to costs.

JUSTICE K.C. BHANU

____ July 2005.

BCS